

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
(MILWAUKEE DIVISION)

TODD AND MARIA FORSTER,
on behalf of themselves and all others
similarly situated,

Plaintiff,

v.

WINDSOR WINDOW COMPANY d/b/a
WINDSOR WINDOWS AND DOORS,
and WOODGRAIN MILLWORK, INC.,

Defendants.

Case No. 1:16-cv-00257

**DECLARATION OF
RICK MCMILLEN**

I, RICK MCMILLEN, declare as follows:

1. I am the Technical Service Manager for Windsor Window Company ("Windsor"), and I make this Declaration in support of Defendants' Motion to Dismiss the Complaint.

2. I have been employed by Windsor for more than 27 years. For more than the past 13 years, I have been employed by Windsor as the Technical Services Manager. During that more than 27 years of employment, and particularly during my employment as the Technical Services Manager, I have extensively worked on matters pertaining to Windsor's various product lines and the express warranties that apply to these products.

3. One of Windsor's product lines is the Pinnacle line of aluminum clad windows. An express warranty applies to Pinnacle windows. From time to time, Windsor

revises the warranty. Which version of the warranty applies depends on the date when the window was manufactured.

4. I have reviewed the Complaint in the above-captioned matter. Paragraphs 1 and 74 tell me that Plaintiffs' 31 Pinnacle windows were purchased and installed in Plaintiffs' Colden, New York home during its construction "in or about June of 2001."

5. Based on Windsor's records and the Complaint, the PINNACLE Limited 20 YEAR Warranty attached to this Declaration as Exhibit A is the warranty that applies to Plaintiffs' windows. Exhibit A is a true and accurate copy of the warranty.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of May, 2016.



Rick McMillen



PINNACLE

Limited 20 YEAR Warranty

Windsor Window Company, as manufacturer, warrants that all Pinnacle Series windows and patio doors will be free from defects in materials and workmanship which significantly impair their operation and proper usage, subject to conditions below, as follows:

INSULATED GLASS - 20 YEARS

Windsor Window Co. warrants the insulated glass in our window and patio door products to be free from manufacturing defects for **20 YEARS** from the date of manufacture. Our insulated glass is warranted not to develop, under normal conditions, any material obstruction of vision from manufacturing defects or as a result of premature failure of the edge seal.

Windsor will provide replacement glass, free of charge, for the first ten (10) years of the warranty period. For the second ten (10) years of the warranty period, replacement glass will be provided at a charge of 50% of the then current list price.

HARDWARE - 20 YEARS

Window and door hardware components are usually manufactured by others and purchased by Windsor for use in our products. We do, however, provide a limited warranty against defects, under normal conditions, for **20 YEARS** from the date of manufacture (except polished brass hardware). Windsor will provide replacement hardware, free of charge, for the first ten (10) years of the warranty period. For the second ten (10) years of the warranty period, replacement hardware will be provided at a charge of 50% of the then current list price. Since we purchase these items from others, we cannot guarantee that the exact model or design of hardware will be available in the future.

EXTERIOR PAINTED ALUMINUM SURFACES - 5 YEARS

Windsor warrants that the paint on the exterior of aluminum clad products will not, under normal atmospheric conditions, peel, check, crack, or flake for a period of **5 YEARS** from the date of manufacture. The paint performance will vary depending on installation in heavy salt spray environments, elevation, orientation, altitude and other atmospheric conditions. If a paint failure should occur, Windsor reserves the right to determine the best method for corrective action.

ALL OTHER COMPONENTS - 5 YEARS

Windsor warrants these items to be free from defects, under normal conditions, for a period of **5 YEARS** from the date of manufacture. Windsor will provide replacement parts, free of charge, during the warranty period.

This Limited Warranty will be voided by any of the following conditions:

- Improper installation of the window or door unit
- Improper, inadequate or untimely protection and /or finishing of all exposed wood surfaces
- Installation in a non-vertical or sloped application
- Damage from accident, misuse or abuse
- Alteration or use for a purpose other than that for which it was intended
- Application of any tint, UV limiting, or sun blocking film to the interior or exterior of the glass
- Use of film shades
- Use in or around ships, boats, trailers, campers, swimming pools, saunas or greenhouses
- Installation above 3,500 ft. above sea level, unless high altitude breather tubes have been factory installed
- Failure to properly finish all wood exterior surfaces and all interior surfaces within 60 days of installation according to industry standard finishing methods or failure to properly maintain the finish

EXCLUSIONS

The following items are not warranted:

1. Any labor for repair or replacement of defective parts or glass or any repainting or refinishing
2. Freight; replacement parts will be shipped to the closest distributor at Windsor's expense or to the homeowner at their expense
3. Glass breakage, including stress cracks
4. Brass Hardware finishes
5. Wood
 - a. texture, color variations and other wood characteristics within Windsor's specifications
 - b. natural warping of wood components unless the "warp" exceeds $\frac{1}{4}$ "; warp includes bow, cup and twist
6. Normal weathering or wear
7. Catastrophic weather or acts of God, including fire, wind or wind-blown objects
8. Swinging doors over 7 ft. tall without factory installed multi-point locking hardware
9. Any special product or item which is manufactured according to specifications provided by the customer
10. Any product in a size which is greater than that shown in our catalog; these products are purchased "as is" without any warranty
11. Product purchased without factory installed glazing; these products are purchased "as is" without any warranty

LIMITS OF LIABILITY

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No distributor, dealer, employee, salesperson, or representative of Windsor has any authority to change or modify this warranty in any way.

Windsor is not liable for any consequential, incidental or punitive damages, costs of installation of replacements or costs of refinishing of window or door components or adjacent parts/millwork. Final determination of whether or not a defect exists shall be made by Windsor.

Windsor, at its sole discretion, may repair or replace the defective part or product or refund the original purchase price. We reserve the right to perform the warranty work or arrange for another party to perform the warranty work.

This warranty is only applicable in the USA and the District of Columbia. This warranty is governed by the laws of the State of Iowa without regard to choice of law principles.

CLAIMS PROCEDURE

If you have any questions regarding this warranty or have any claim under the provisions of this warranty, please contact your local authorized independent Windsor distributor or one of our manufacturing facilities listed below. You must notify Windsor, or your local authorized independent Windsor distributor of any defects within a reasonable period, but no later than 30 days after the defect is discovered or should have been discovered. Windsor may require any defective parts be returned to Windsor or our closest distributor/dealer.

Effective on Product Manufactured after 1-1-98

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900 South 19th Street
West Des Moines, IA 50265
515-223-6660

Windsor Window - North Carolina
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704-283-7459